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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,188	02/02/2000	David Cushing	2566-104A	5851
6449	7590	06/29/2006	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C.			BASHORE, ALAIN L	
1425 K STREET, N.W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20005			1762	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/496,188

Applicant(s)

CUSHING, DAVID

Examiner

Alain L. Bashore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-6, 11-16, 18, 20-21 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 7-10, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Restart of Final Office action***

The office action re-starts the time period for response. Allowable subject matter has been indicated in response to the interview of 11-15-05 where the arguments made by applicant were re-considered and found convincing with regards to certain claims pending.

### ***Claim Objections***

1. Claim 11 is objected to because of the following informalities: the claim as presently written may read on only a software program. Please include language that will clearly describe an apparatus in the body of the claim. The terms: network, program, and database may be solely software per se.

There must be positively recited in the body of the claim recitations defining structural and functional interrelationships between the data structure and the computer software and hardware components (a useful, concrete and tangible result produced). This permits the data structure's functionality to be realized, as more than a manipulation of an abstract idea [*In re Wamerdam*, 33 F.3d 1354; 31 USPQ2d 1754 (Fed. Cir. 1994)].

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 5-6, 11-16, 18, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraser et al in view of Madoff et al.

Fraser et al discloses a computer implemented method for identifying a price at which to conduct a batch auction of a financial security. A plurality of order requests (priced) from a plurality of sources is accepted within certain order parameters and a single price is determined which to trade (col 1, lines 45-67; col 2, lines 1-31). Since the method to Fraser et al utilizes events and rules, there is present a algorithm.

Fraser et al does not explicitly disclose an imbalance ratio that is determined and on the result of a comparison of the imbalance ratio to a predetermined value.

Madoff et al discloses an imbalance ratio (para 0034; anticipated share allocation) that is determined and on the result of a comparison of the imbalance ratio to a predetermined value (para 0034; percentage of sum of gross contributions).

It would have been obvious to one with ordinary skill in the art to include an imbalance ratio that is determined and on the result of a comparison of the imbalance

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ratio to a predetermined value because Madoff et al teaches imbalance problems known in the trading art (para 0002).

***Allowable Subject Matter***

4. Claims 3, 4, 7-10, 17, 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Allowable subject matter may require further review for applications in class 705 before a notice of allowance is mailed to applicant. The time period for review may vary from application to application.

***Response to Arguments***

6. Applicant's arguments have been fully considered but they are not persuasive.

The maximum number of identified shares is disclosed as the "actives" on col 2, lines 47-55 to Fraser et al. The term for "maximum" does not require all shares identified as presently claimed.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 571-272-6739. The examiner can normally be reached on about 7:30 am to 5:00 pm (Mon. thru Thurs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Regarding all Class 705 applications, the management contact regarding examination is: Vincent Millin (SPE, art unit 3624) at 571-272-6747.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alain L. Bashore  
Primary Examiner  
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